

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILEDIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

FEB 05 2008

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SPENCER L. STACEY,

Petitioner,

v.

GENE JOHNSON, et al.,

Respondents.

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Civil Action No. 7:08-cv-00059

MEMORANDUM OPINION

By: Samuel G. Wilson

United States District Judge

Petitioner Spencer L. Stacey, a Virginia inmate proceeding pro se, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Stacey is challenging his June 4, 1992 convictions of four counts of robbery and the resulting sentence of life plus 75 years. As grounds for relief, Stacey alleges several grounds of ineffective assistance of counsel and that the state court breached his plea agreement by convicting him. The court finds that Stacey has failed to exhaust his available state court remedies and, therefore, dismisses his petition without prejudice.

I.

According to Stacey's petition, on June 4, 1992, after pleading no contest to four counts of robbery, Stacey was convicted in the Danville Circuit Court of all four counts and sentenced to a total of life plus 75 years of incarceration. Stacey concedes that no appeal was filed, but argues that his attorney was ineffective in failing to file an appeal. Stacey also concedes that he has not filed a state habeas petition.

II.


A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. Preiser v. Rodriguez, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. Slayton v. Smith, 404 U.S. 53 (1971). In Virginia, a non-death row inmate ultimately must present his claim to the Supreme Court of Virginia and receive a ruling from that

court, before a federal district court may consider his claims. See Va. Code § 8.01-654. In this case, Stacey concedes that he has not filed a state habeas petition. Accordingly, the court finds that Stacey has not exhausted his state court remedies as required and, thus, dismisses Stacey's petition without prejudice for failure to exhaust state court remedies.

III.

The Clerk is directed to send a certified copy of this Memorandum Opinion and accompanying Order to the petitioner.

ENTER: This 5th day of February, 2008.


United States District Judge